TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 16, 2008

TO: Persons on the attached mailing list.

RE: Flint Hills Resources, LP
Permit No. 8803A and PSD-TX-413M8

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the TCEQ Central Office, the TCEQ Corpus Christi Regional Office, and the Corpus Christi Public Library - Main Branch, 805 Comanche Street, Corpus Christi, Nueces County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

(1) Your name, address, daytime telephone number, and, if possible, a fax number.

(2) If the request is made by a group or association, the request must identify:
   (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
   (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

(3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

(4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities. A person who may be affected by emissions of air contaminants from the facility is entitled to request a contested case hearing.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela
Chief Clerk

LDC/mr

Enclosures

MAILING LIST
for
Flint Hills Resources, LP
Permit No. 8803A and PSD-TX-413M8

FOR THE APPLICANT:

Eric R. Kaysen, Environmental Manager
Flint Hills Resources LP
P.O. Box 2608
Corpus Christi, Texas 78403

INTERESTED PERSONS:

Enrique Valdivia, Counsel
Texas RioGrande Legal Aid
1111 North Main Avenue
San Antonio, Texas 78212

FOR THE EXECUTIVE DIRECTOR:

Erin Selvera, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Donald Nelon, Technical Staff
Texas Commission on Environmental Quality
Air Permits Division MC-163
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

TCEQ FLEXIBLE AIR QAULITY PERMIT NO. 8803A
PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AIR QUALITY PERMIT NO. PSD-TX-413M8

APPLICATION BY	§	BEFORE THE
	§	
FLINT HILLS RESOURCES, LP	§	TEXAS COMMISSION ON
	§	
NUECES COUNTY, TEXAS	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENTS

The Executive Director of the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") files this Response to Comments ("Response") on the permit amendment application and Executive Director's preliminary decision. As required by Title 30, Texas Administrative Code (TAC) § 55.156, before an application is approved, the Executive Director shall prepare a response to all timely, relevant material, or significant comments. The Office of Chief Clerk received timely comments from the following persons or groups: The Environmental Protection Agency and Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative. This Response addresses all comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility and Proposals

Flint Hills Resources, LP (FHR or Applicant) has applied to the TCEQ for the amendment of Flexible Permit No. 8803A/PSD-TX-413M8 for the West Refinery. The West Refinery is located at 2825 Suntide Road, Corpus Christi, Nueces County, Texas. The plant will emit the following air contaminants: nitrogen oxides (NOx), carbon monoxide (CO), volatile organic compounds (VOC), particulate matter including particulate matter with a diameter less than ten microns (PM/PM_{10}), sulfur dioxide (SO_2), hydrogen sulfide (H_2S) and ammonia.

The Applicant seeks authorization to incorporate Standard Permit Authorization Nos. 74076, 77459, 77655, 79214 and Permit by Rule Registration No. 75266 into the permit. The applicant is also seeking reauthorization of ammonia emissions from the SNCR (selective noncatalytic reduction) installation on FCCU CO Boiler/Scrubber (EPN AA-4) and voidance of the Standard Permit 76446. Furthermore, an ammonia cap will be added to the Maximum Allowable Emission Rate Table (MAERT) of the permit. There will be no physical or operational changes as a result of these amendments because construction and operation is currently authorized under the existing authorizations as noted above.

Procedural Background

TCEQ received a flexible permit amendment application on August 9, 2006 and assigned it Project No. 124129. The permit amendment application was declared administratively complete on August 15, 2006. During the processing, it was determined that the project triggers public notice. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI) amendment for this application was published on February 16, 2007, in the *Corpus Christi Caller Times*. The application was declared technically complete as of May 25, 2007. The Notice of Application and Preliminary Decision (NAPD) for this Air Quality Permit amendment was published on June 1, 2007 in the *Corpus Christi Caller Times*. The comment period for this application closed on July 2, 2007.

COMMENTS AND RESPONSES

COMMENT 1: Emission Rates/Public Notice

The commenters cited differences between the two emission change estimations ("Total Increases/Decreases to Emission Rate Caps" and "Total Increases for Public Notice Applicability") found on page ten of the August 9, 2006 flexible amendment application. In a separate comment letter they also quoted Special Conditions 75 and 76 of the May 2007 draft permit and the first paragraph of the Maximum Allowable Emission Rate Table (MAERT) as the basis for this concern.

The commenters also cited the missing footnote 1 on the emission change tables and the Applicant's response to the deficiency letter about the missing footnote 1 in which the Applicant explained that they calculated the emission increases for public notice applicability using the Guidance Document entitled "Public Notification Procedures for New Source Review Air Quality Permit Applications." The commenters are concerned that the Applicant placed their reliance on this document only after, and in response to, a specific inquiry by TCEQ. The commenters also question whether the TCEQ Guidance Document entitled "Public Notification Procedures for New Source Review Air Quality Permit Applications" which the Applicant stated they used (for determination of the project's public notice applicability) is active, accessible and in full force, or whether it has been withdrawn by TCEQ. The commenters stated that if the document has indeed been withdrawn by TCEQ, then the Applicant relied on withdrawn TCEQ guidance to exempt from public notification 118.86 (tons per year) tpy of the emission increases sought in this application.

The commenters further stated that if all 123.03 tpy of CO emission increases are "counted" then this modification exceeds the CO significance level in 40 CFR Section 51.166(b)(23)(i), and therefore, should trigger major NSR review. They reiterated that this project should be subject to major new source review since the Applicant relied on the TCEQ guidance document that does not appear to exist. (Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative)

RESPONSE 1:

The emissions estimations in "Total Increases for Public Notice Applicability" are not the same as these in the "Total Increases/Decreases to Emission Rate Caps". To calculate the "Total Increases/Decreases to Emission Rate Caps" the proposed emissions (including the currently authorized emissions in the standard permits and permits by rule that are being rolled-in) are compared to the current permit's emission caps. To calculate the "Total Increases for Public Notice Applicability" only the additional real emissions (emission increases) were taken into account. Because previously authorized emissions covered by standard permits and permit by rule which are simply being rolled-in to the existing flexible permit are not adding any additional emissions to the site, they are not included in the calculation of "Total Increases for Public Notice Applicability".

In case of CO, the recently revised CO increase (proposed allowable- current permit allowable) is 105.84 tpy due to the AP-42 updates. It is TCEQ's policy not to consider increases due to AP-42 updates as actual emission increases for determining public notice applicability. This is because the plant is not making any modifications that increase or add to its emissions. Therefore, consistent with TCEQ policy, the applicant did not count the AP-42 increases for CO as increases for public notice purposes.

In accordance with 30 TAC § 116.721(d)(1), when seeking renewal or amendment of a flexible permit, the TCEQ requires applicants roll-in or consolidate all previously authorized standard permits and permits by rule. In the case of this application, Standard Permit Authorization Nos. 74076, 77459, 77655, 79214 and Permit by Rule Registration No. 75266 are being consolidated into the flexible permit. In addition, the Applicant seeks to reauthorize the ammonia emissions from the SNCR on the FCCU CO Boiler/Scrubber (EPN AA-4), and place an ammonia cap in the permit. NOx, CO, VOC, SO_2 and PM emissions from EPN AA-4 are already under the flexible permit cap, therefore, additional permitting action is not required. It should be noted that all of the standard permits being rolled-in under this application were pollution control projects which were mandated by the EPA Consent Decree entered on April 25, 2001 between the Applicant, EPA and the Department of Justice. The control technology installations were already completed and in operation which decreased the NOx and H_2S emissions from the facility. The increase of ammonia due to the previous addition of SNCR NOx emission control technology on FCCU CO Boiler/Scrubber was modeled and the impacts were evaluated as part of this amendment application. Predicted ground level concentration of ammonia was found to be less than 10% of its Effects Screening Level (ESL), therefore, the impacts were found to be acceptable. There will be no physical and operational changes at the facility due to this amendment.

Additionally, since there are no proposed physical changes and no changes in method of operation, this amendment action does not trigger PSD major modification, therefore, PSD review does not apply.

It should be noted that Special Conditions 75 and 76 are existing permit conditions and they are not affected by this amendment.

The Guidance Package for Public Notification Procedures for Air Quality Permit Application was a draft working document the permit reviewers previously used to give guidance to the regulated community on the requirements and procedures of public notification associated with air quality permit applications. The document was in use at the time the applicant went through the public notice applicability exercise for the application. It has since been withdrawn and replaced by the Public Notice Procedures at the TCEQ Air Permits website. Not withstanding the withdrawal, the applicant complied with all public notice requirements under 30 TAC Chapter 39 (relating to Applicability and General Provisions, Public Notice of Air Quality Applications). Additionally, when calculating the total emission increases for public notice applicability, the Applicant also referred to the preamble of the adopted Rule of Chapter 39, published in the Texas Register on November 9, 2001[1], which explains that the emission increases due to standardized emission factor changes are excluded from the total emission increases calculated for public notice applicability. In this publication, it is clearly stated that only emission increases resulting from facility modification, not the entire allowable emission limit, will be considered for determination of public notice applicability.

The public can review the most current TCEQ Air Permits rules and public notice procedures at the following web site:

http://www.tceq.state.tx.us/permitting/air/nav/air_public notice.html

Please note that an alteration to the permit was authorized on August 8, 2007 with the following emission cap reductions: NOx: -361.43 tpy, CO: -136.11 tpy; SO_2: -53.55 tpy; PM/PM_{10}: -52.21 tpy and VOC: -7.52 tpy. Since the altered permit is now the current permit, the Applicant revised their Summary of Emission Rate Cap Change tables, to reflect the reductions made during the alteration. The technical review of the roll-in amendment application (Project No. 124129) is updated to revise the allowable emission cap changes under the Subtitle "Project Overview."

COMMENT 2: AP42 Emission Factors

The commenters cited text from EPA's AP 42 document stating that data from source-specific emission tests or continuous emission monitors are usually preferred [over emission factors] for estimating a source's emissions because those data provide the best representation of the tested source's emissions. The commenters state that the Applicant should rely on continuous monitoring and direct measurement of its emissions instead of emission factors. The commenters think that the Applicant's reliance on emission factors indicates that their emission monitoring is

[1] 26 TexReg 9097.

inadequate to assure compliance with all applicable requirements and emission limits. (Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative)

RESPONSE 2:
During permit application reviews, TCEQ's Air Permits staff accepts the update of allowable emission rates based on AP-42 factors. This is done when there is no data available yet; the data is available, but, further testing is in progress; or the applicant wants to be conservative with the allowable emission rate calculations to make sure that they will never exceed the allowables. The applicant's use of the AP-42 factors to establish allowable emission rates is more conservative since the allowable emission rates based on AP-42 factors are in most cases overestimated and the modeling done based on more conservative allowable estimates will be more protective of the human health and environment. This approach is acceptable by TCEQ.

The draft permit has adequate conditions requiring stack testing and continuous emission monitoring systems (CEMS) to generate actual test results, except for some pollutants from boilers and heaters that fire natural gas or fuel gas. Since the flexible permit authorization was issued in 1999, the Applicant's actual test data shows that actual emissions have been less than the allowables. The permit specifies to which TCEQ offices the stack testing and monitoring data is sent. Copies of the data can be viewed at those offices. The Applicant also reports actual emissions to TCEQ Emission Inventory (EI) Section. Additional information regarding EI, including copies of the EI for this facility can be found at the following website:

http://www.tceq.state.tx.us/implementation/air/industei/psei.html or by calling 1-512-239-DATA

COMMENT 3: Environmental Justice/Contested Case Hearing Request
The commenters state that the population near Flint Hills West Refinery, also known as refinery row, is mostly people of color and low-income due to the race zoning restrictions applied decades ago and, although the racial zoning was repealed, the communities along the refinery row are still predominantly low-income, communities of color, and, city, county and state of Texas have not corrected the problem. They further state that this issue has been brought to the attention of the US Department of Justice.

The commenters cite a statistical analysis conducted by Public Citizen "Industrial Upset Pollution: Who Pays the Price?" which they state indicate that children of color and low-income are being adversely impacted by pollution, affecting school attendance rates, children's health, education and the economy. They also cite birth defect studies conducted by the Texas Department of State Health Services Epidemiology and Surveillance Branch (7/06) that reveals that for 1996-2002, the Corpus Christi area had 84% higher rates of overall birth defects when compared to the rest of the registry. Severe birth defects were 17% higher in Corpus Christi, when compared to the rest of the state.

The commenters request that TCEQ consider the issues identified above and grant them a contested case hearing. (Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative)

RESPONSE 3:
When evaluating permits, the TCEQ takes into consideration the surrounding community regardless of its socioeconomic or racial status. When modeling is performed for a permit, a background concentration for the area may be included. Also, when the TCEQ reviews off-property impacts for speciated contaminants, effects screening levels, which are set at a very protective level, are used. In areas that have demonstrated problems with particular air contaminants, an additional toxicological review is conducted to ensure protectiveness.

While the TCEQ and EPA collaborate on the cumulative impacts from permitting activities, rules, and policies of both agencies, the TCEQ continues to actively manage a State Environmental Equity Program. The TCEQ's Environmental Equity Program was established in 1993 to improve communication between government, local communities and neighboring industries. Individuals may raise environmental equity or environmental justice concerns with TCEQ staff through a toll-free number, 1-800-687-4040, or at the following address and phone and fax numbers:

Environmental Equity (MC - 108)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
512/239-4000 (phone)
512/239-4007 (fax)

Additional information can be found on the website:
www.tceq.state.tx.us/comm/opa/envequ.html

Regarding the request for a contested case hearing, determinations concerning whether or not to grant the hearing request and affected party status will be considered by the commission, pursuant to TCEQ rules, at a commission meeting to be scheduled by the chief clerk. The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and all timely commenters and requestors at least thirty-five days before the first meeting at which the commission considers the requests.

COMMENT 4: MAERT Language
The commenters quoted the last sentence of the paragraph under the MAERT's title: "Any proposed increase in emission rates may require an application for a modification of the facilities covered by this permit." The commenters suggest that this sentence should have a mandatory tone and should read as follows: "Any proposed increase in emission rates shall require an

application for a modification of the facilities covered by this permit." (Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative)

RESPONSE 4:
The paragraph under the MAERT is not permit specific. It is standard language placed on every MAERT. There are many cases where emission rates may increase without a modification to a facility. In some cases, emission rates increase due to the modifications. Therefore, the sentence under the MAERT will remain as stated.

COMMENT 5: Records Retention
The commenters state that the draft Special Conditions dated May, 2007 contain numerous requirements to maintain records for periods of two or three years. They cited examples of draft Special Conditions where either a two or three year record keeping requirement is required. They state that, in order to comply with the Clean Air Act, all records must be kept for at least five years.(Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative)

Additionally, EPA submitted comment regarding the Special Condition 69 on page 36 of the draft permit stating: "The record retention requirement in the proposed Flint Hills permit is two years. This is inconsistent with the Federal PAL rule and the State's PAL rule which requires five year recordkeeping. Please explain how this is consistent with Federal and State Law."

RESPONSE 5:
Flexible Permit No. 8803A/PSD-TX-413M8 is not a PAL permit and, therefore, is not subject to TCEQ's PAL permit rules. However, Special Condition 30.A of the Title V Permit for this facility (Operating Permit No. O-01272) incorporates the General and Special Conditions of the Flexible Permit into the Title V permit. Notwithstanding the record keeping periods specified in the permit conditions, in accordance with 30 TAC § 122.144(1) and Operating Permit No. O-01272, the Applicant is required to maintain permit records relating to the permit conditions for five years.

Please note that the record keeping period is changed to 5 years in the Special Conditions of the draft permit.

COMMENT 6: Leak Detection and Repair (LDAR)
The commenters made a comment about the audio, visual and olfactory (AVO) monitoring of connectors in Special Condition No. 18(E), AVO monitoring requirement in Special Condition 25(A), and AVO monitoring in Special Condition 41(A). They think that simple "look, listen, and smell" techniques do not constitute an adequate LDAR program. They state that, according to US EPA, while individual leaks are typically small, the sum of all fugitive leaks from thousands of potential sources at a refinery can be one of its largest emission sources. They state that rather than "look, listen, and smell," the LDAR program should require the use of Fourier Transformation Infrared Sepectroscopy ("FTIR"), or at the very least, a portable VOC detection

device. They also state that the LDAR program should require follow-up testing be done to make sure that leaks are fixed. (Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative)

RESPONSE 6:
The 28VHP LDAR program in draft Special Condition No. 18(E) requires new and reworked piping connections to be welded or flanged, and requires them to be tested. Additionally, it requires adjustments to be made as necessary to obtain leak-free performance. The phrase "adjustments made as necessary to obtain leak-free performance" requires reinspection (follow-up inspection) and repair. Therefore, reinspection and repair are included in that special condition. In addition, after it is confirmed that there are no VOC leaks, 28VHP requires an additional weekly inspection of the connectors by audio, visual and olfactory (AVO) inspection. Special Condition 18 (H) also requires tagging and repair of any leaking components found through visual inspection. AVO inspection, although it may sound simple, is conducted by trained plant personnel and thus, is an effective method to discover leaks. Therefore, the AVO program is required for inspection and repair of the leaks of HF in draft Special Condition 25 and inspection and repair of the hydrogen sulfide leaks in Special Condition 41.

Please note that permit language in Special Condition No. 18 (E) is revised to include a requirement stating how to handle any leaks that are discovered through AVO methods.

COMMENT 7: Ultra Low-NOx Burners
Commenters stated that draft Special Condition 78 required the holder of this permit to install ultra Low-NOx burners (ULNB), however, next generation ULNBs, designed to achieve NOx emissions of 0.012 - 0.020 pounds per million British thermal units of heat input (lbs/MMBtu), have been required in US. EPA consent decrees with refineries since 2000. Therefore, they state that"next generation" ULNBs should now be considered the minimum required technology for any new refinery modifications. (Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative)

RESPONSE 7:
The Applicant is required to fulfill the conditions of the consent decree (entered on April 25, 2001 between EPA and Department of Justice as amended) with regard to NOx emission factors. The heaters were tested after the installation of the ultra Low NOx burners to determine which emission factors they are achieving and those emission factors have been placed under Special Condition No. 2 of the permit during a previous permitting action and this permitting action. This meets the NSR permit requirement and the consent decree.

COMMENT 8: NOx Emission Rates
Commenters stated that Draft Special Condition 2 requires the crude boiler (EPN R-201) to achieve a NOx emission rate of 0.08 lbs/MMBtu. They further state that "next generation" ULNB designed to achieve NOx emissions of 0.012 - 0.020 lbs/MMBtu have been required by

US EPA consent decrees with refineries since 2000 and such an emission rate should therefore now be considered the minimum required limitation for any new refinery modifications. (Citizens for Environmental Justice, Refinery Reform Campaign and South Texas Colonias Initiative)

RESPONSE 8:
Crude Boiler (EPN R-201) and its NOx emission rate of 0.08 lbs/MMBtu was authorized during a prior permitting action and was accepted as BACT during that review. Since this boiler is not undergoing any modification during this amendment application, review of its emission limits is not required..

COMMENT 9: Prior NSR/PSD Review and Enforceability of Emission Limits
Environmental Protection Agency (EPA) stated that since the Texas flexible permit program has not been approved by U.S. Environmental Protection Agency (EPA) as a revision to the Texas State Implementation Plan (SIP), requirements and conditions of pre-existing Prevention of Significant Deterioration (PSD)/New Source Review (NSR) permits should remain in effect, as they are legal mechanisms through which the underlying PSD or NSR requirements remain applicable to individual sources and emission units. Amendments to PSD or NSR permits must be made in accordance with the approved Texas SIP permitting programs. Specifically, EPA is concerned that federally enforceable limits are not replaced by limits only enforceable at the state level.

EPA further made the following comments: "EPA continues to question what is meant by PSD analyses. Please confirm that modeling or an air quality analysis and a current BACT review were conducted on the units during the initial flexible permit issuance process when the CAPs were put in place. Also, please confirm whether actual emission rates are greater than or less than the proposed CAP. This permitting action also includes the roll-in of Standard permits and PBR. For the record, please indicate in your technical review and permit what the SIP enforceable limits are for the permits being rolled into this permitting action."

RESPONSE 9:
On March 23, 1999, Permit No.8803A was amended to consolidate multiple state NSR and PSD permits into a single flexible permit: Permit No. 8803A/PSD-TX-413M8. Although this amendment did not involve any physical modifications of permitted facilities, a PSD review was performed as part of the amendment process. Specifically, a full PSD review, including a BACT analysis and modeling, was conducted for all sources authorized by the flexible permit and for the following pollutants; NOx, CO, SO_2, PM/PM_{10} and H_2S. A PSD review was not triggered for VOC as part of the 1999 amendment process, nor had it been previously required. The PSD review conducted as part of the 1999 amendment process, resulted in the issuance of the flexible permit which established emission CAPs and contained federally enforceable operational limitations.

In this amendment application, no federally enforceable emission limits or production limits that were established as part of the March 23, 1999 flexible permit issuance are being removed. In this amendment, emission limits are changed to reflect updated emission factors and an ammonia emission cap is established.

According to emission inventory data, current actual emission rates are less than proposed CAPs. Actual emission rates have been below applicable CAP since the issuance of the flexible permit in 1999.

Per EPA's request, emission limits for standard permits and the PBR are included in the technical review of this amendment project for reference purposes and the revised technical review for the amendment project is attached.

COMMENT 10: Start-Up, Shut-Down & Maintenance

EPA's comment regarding the draft special condition Nos. 69 and 74 are as follows: "All start-up, shutdown, and maintenance (SSM) activities associated with this project must be authorized by this permit. SSM emissions must be subject to the permitted emission limits and supported by adequate monitoring and recordkeeping provisions. In addition, the Texas Commission on Environmental Quality should provide an on-the-record analysis as to whether compliance with normal Best Available Control Technology limits is feasible or not, during SSM and if so, what design, control, methodology, work practice (such as a limitation on total startup and shutdown event time) or other change is appropriate for inclusion in the permit to minimize excess emissions during those periods.

RESPONSE 10

MSS[2] activities are not authorized as part of this permitting action. Instead, the Applicant has opted to seek authorization of MSS activities in accordance with the schedule in 30 TAC Section 101.222(h)(1)(a), which is associated with the phase out of the affirmative defense for emissions from planned MSS activities from petroleum refining facilities. Therefore, the Applicant submitted an application to amend Flexible Permit No. 8803A/PSD-TX-413M8 to authorize planned MSS activities associated with the permitted sources at its Corpus Christi plant on January 5, 2007. This MSS amendment application is still undergoing TCEQ technical review. Any planned MSS activities currently authorized are included in the current permit.

COMMENT 11: SIP Compliance and Netting

EPA's comment regarding the rolling-in of standard permits and a permit by rule into the permit is as follows: " The EPA is concerned that the Standard Permits 74076, 77459, 77655, and

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[2] 1 The EPA generally uses the acronym SSM to mean startup, shutdown and malfunction as each term is defined in 40CFR§ 63.2. In this instance however, the EPA uses SSM to mean startup, shutdown and maintenance. TCEQ uses the acronym MSS for startup, shutdown and maintenance. For the sake of clarity, the TCEQ acronym is used exclusively in Response 10 for all startup, shutdown and maintenance references

79214, and Permit by Rule (PBR) Registration 75266 that are being rolled into the permit may not meet the requirements of the current SIP. If the facility conducts netting to qualify for a Standard Permit or PBR, it appears that public participation requirements could be bypassed for sources that net out of major NSR requirements. Please ensure that the Standard permits and PBRs incorporated by reference do not allow emission increases that preclude the PSD modifications requirements of the permit.

EPA further added the following comments: "The D.C. Circuit Court of Appeals in New York v. EPA, June 24, 2005, vacated the Pollution Control project (PCP) provisions in 40 CFR 51.165(e) and 51.166(v). EPA has not requested reconsideration of the Court's holding except to request clarification that vacatur of the PCP exemption applies prospectively only. In this case, we are concerned that the PCPs vacated by the court could be contained in the standard operating permits and permit-by-rule permit rolled into this flexible permit. For this permitting action, the record should indicate that TCEQ did consider the collateral increases of the "PCPs" in the PSD/NNSR review. Specifically, TCEQ needs to ensure that the facility conducts contemporaneous netting, where necessary, in accordance with PSD permitting requirements".

RESPONSE 11:
This amendment project did not trigger netting. In this amendment project, TCEQ only added an ammonia cap into the permit and rolled-in the standard permits and the PBR mentioned in this response. The standard permits or PBR that are being rolled into Flexible Permit No. 8803A/PSD-TX-413M8 did not trigger netting at the time they were authorized either. Specifically, there are no emission increases associated with Standard Permit No. 74076 which authorized installation of a floating roof for controlling VOC emissions, or Standard permit Nos. 77459 and 77655 which authorized installation of NOx controls (i.e., steam injection and ultra low NOx burners). Moreover, the VOC emission increases associated with the change in tank service authorized by PBR Registration No. 75266 and installation of the Caustic Scrubber authorized by Standard Permit No. 79214 are well below PSD trigger levels (i.e., maximum annual VOC emissions from the tank and the wastewater fugitives are less than 1 ton/year). Rolled-in Standard permits and PBR will be included in the contemporaneous window of the next project if netting is required.

COMMENT 12: Deviation Reports
EPA's Comment regarding the Deviation Reports is as follows: "The permit should require submission of semi-annual or deviation reports as required by the Federal Plantwide Applicability (PAL) rule and the State's PAL rule. Please explain how this is consistent with Federal and State Law."

RESPONSE 12:
Flexible Permit No. 8803A/PSD-TX-413M8 is not a PAL permit and therefore, is not subject to TCEQ's PAL permit rules. However, once this application is approved, the rolled in sources will be subject to semi-annual deviation reporting and annual compliance certifications. Special Condition 30.A of the Title V Permit for this facility (No. O-01272) incorporates the General and

Special Conditions of the Flexible Permit into the Title V Permit. Thus, these provisions will be subject to the Title V deviation reporting and compliance certification requirements of 30 TAC §§ 122.145 and 122.146.

COMMENT 13: Excess Emissions from Malfunctions

EPA's Comment regarding excess emissions from malfunctions is as follows: "Please clarify in the permit that excess emissions from malfunctions are violations of the permit and must be included in any determination of compliance."

RESPONSE 13:

In accordance with TCEQ rules at 30 TAC §101.201, both recordable and reportable emission events are reported by the Applicant as deviations under the Title V Operating Permit No. O-01272. Excess emissions resulting from malfunctions are not authorized and, represent violations of the permit. Since emissions resulting from malfunctions are not authorized, no additional permit language is needed.

Changes Made In Response To Comments

The Executive Director has made the following changes to the provisions of the draft permit in response to public comment:

In response to the Public Comment 5, record keeping period is changed in Special Condition Nos. 10; 29(G); 43(D)(3); 49(D); 51; 54; 55; 56(B); 59; 65(D); and 66 to require a 5 year record retention period.

In response to the Public Comment 6, Special Condition No. 18(E) was revised to add the following requirement: "Any leaks discovered through AVO inspection shall be tagged and replaced or repaired".

Respectfully submitted,

Texas Commission on Environmental Quality
Glenn Shankle, Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Robert Martinez, Director
Environmental Law Division

Erin Selvera, Staff Attorney
Environmental Law Division
State Bar No. 24043385
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-6033

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY